

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-151-C - ORDER NO. 2003-702  
DECEMBER 8, 2003 *vw*

IN RE: Application of ALLTEL	)	ORDER GRANTING
Communications, Inc. for Designation	)	MOTION TO WITHDRAW
as an Eligible Telecommunications	)	APPLICATION
Carrier Pursuant to Section 214(e)(2) of	)	
the Telecommunications Act of 1934.	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the request of ALLTEL Communications, Inc. (“ALLTEL” or the “Company”) requesting to withdraw its Amended Application to this Commission for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended.

This action was first initiated by ALLTEL on April 29, 2003, with the filing of an Application for designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended. The South Carolina Telephone Coalition (“SCTC”) intervened in this matter. ALLTEL thereafter filed an Amended Application on July 2, 2003. During the pendency of the Application and Amended Application, discovery was conducted by the parties, and a hearing before the Commission was held on the Amended Application on September 11, 2003. Subsequently, on November 3, 2003, ALLTEL filed with the Commission a Motion to Withdraw Amended Application. By its Motion to Withdraw, ALLTEL requested that

the withdrawal be granted without prejudice. The SCTC filed a Return to ALLTEL's Motion requesting that the Commission grant the Motion to Withdraw by ALLTEL, but that the Commission do so with prejudice.

By letter dated November 5, 2003, ALLTEL modified its Motion to Withdraw to state that, while ALLTEL does not presently contemplate another ETC filing with the Commission, ALLTEL will certainly not make such a filing any time prior to twelve months after the Commission grants ALLTEL's Motion to Withdraw.

Also by letter dated November 5, 2003, the SCTC notified the Commission that it no longer objected to ALLTEL Motion to Withdraw as amended by ALLTEL's November 5, 2003, letter wherein ALLTEL advised the Commission that ALLTEL would not file another ETC application at any time prior to twelve months after the Commission grants ALLTEL's Motion to Withdraw.

Finding that ALLTEL desires to withdraw its Amended Application and does so with the understanding that ALLTEL will not file another ETC application at any time prior to twelve months after the Commission grants ALLTEL's Motion to Withdraw and also finding that the SCTC is in agreement with ALLTEL's Motion to Withdraw as modified by ALLTEL's November 5, 2003, letter, the Commission finds it appropriate to grant ALLTEL's Motion to Withdraw as modified by ALLTEL's November 5, 2003 letter. Because the Motion to Withdraw was filed after this matter had gone to hearing and thus after the parties had expended considerable time, effort, and expense in preparing for and litigating this case, the Commission finds it appropriate to include the restriction as proposed by ALLTEL, and agreed to by the SCTC, that ALLTEL will not

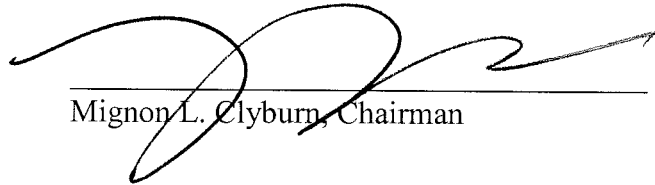
file another ETC application with the Commission prior to twelve months from the granting of the Motion to Withdraw. Under Rule 41(a)(1), SCRCP, a plaintiff may voluntarily dismiss an action before the adverse party files an answer or motion for summary judgment, or by a stipulation of dismissal signed by all parties appearing in the action. Under Rule 41(a)(2), “except as provided in [Rule 41(a)(1)], an action shall not be dismissed at the plaintiff’s insistence save upon order of the court and upon such terms and conditions as the court deems proper.” The Commission concludes that Rule 41(a), SCRCP, provides the Commission with the authority to place conditions on the withdrawal of the Amended Application, and further the Commission finds and concludes that a limitation on when another application may be filed to be an appropriate restriction in light of the fact that the matter had gone through the hearing when the request to withdraw was made.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT

1. ALLTELL’s Motion to Withdraw its Amended Application for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended, is hereby GRANTED as modified by ALLTEL’s letter of November 5, 2003, and that ALLTEL shall be, and is hereby prohibited from filing a similar application seeking ETC status with this Commission for a period of 12 months from November 12, 2003, which is the date that the Commission granted ALLTEL’s Motion to Withdraw.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Bruce F. Duke, Acting Executive Director

(SEAL)